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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

	) Case No.	
SID NAIMAN, individually and on	)	
behalf of all others similarly situated,	) <b><u>CLASS ACTION</u></b>	
	)	
Plaintiff,	) <b>COMPLAINT FOR VIOLATIONS</b>	
	) <b>OF:</b>	
vs.	)	
	)	1. NEGLIGENT VIOLATIONS
NATIONAL CONTRACT	)	OF THE TELEPHONE
SOLUTIONS , INC., and DOES 1	)	CONSUMER PROTECTION
through 10, inclusive, and each of them,	)	ACT [47 U.S.C. §227(b)]
	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
Defendant.	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	
	)	
	) <b><u>DEMAND FOR JURY TRIAL</u></b>	

Plaintiff SID NAIMAN (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon

personal knowledge:

### **NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of NATIONAL CONTRACT SOLUTIONS, INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

### **JURISDICTION & VENUE**

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Georgia corporation. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does business within the State of California and Plaintiff resides within the County of Butte.

### **PARTIES**

4. Plaintiff, SID NAIMAN (“Plaintiff”), is a natural person residing in Butte County, California and is a “person” as defined by 47 U.S.C. § 153 (39).

5. Defendant, NATIONAL CONTRACT SOLUTIONS, INC. (“Defendant”) is a timeshare company, and is a “person” as defined by 47 U.S.C.

1 § 153 (39).

2 6. The above named Defendant, and its subsidiaries and agents, are  
3 collectively referred to as “Defendants.” The true names and capacities of the  
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
6 names. Each of the Defendants designated herein as a DOE is legally responsible  
7 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
8 Complaint to reflect the true names and capacities of the DOE Defendants when  
9 such identities become known.

10 7. Plaintiff is informed and believes that at all relevant times, each and  
11 every Defendant was acting as an agent and/or employee of each of the other  
12 Defendants and was acting within the course and scope of said agency and/or  
13 employment with the full knowledge and consent of each of the other Defendants.  
14 Plaintiff is informed and believes that each of the acts and/or omissions complained  
15 of herein was made known to, and ratified by, each of the other Defendants.

16 **FACTUAL ALLEGATIONS**

17 8. Beginning in or around August 2019, Defendant contacted Plaintiff on  
18 Plaintiff’s cellular telephone number ending in -6443, in an attempt to solicit  
19 Plaintiff to purchase Defendant’s services.

20 9. Defendant used an “automatic telephone dialing system” as defined  
21 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

22 10. Defendant contacted or attempted to contact Plaintiff from telephone  
23 numbers 925-324-9930 and 404-566-9026 confirmed to be Defendant’s numbers.

24 11. Defendant’s calls constituted calls that were not for emergency  
25 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

26 12. During all relevant times, Defendant did not possess Plaintiff’s “prior  
27 express consent” to receive calls using an automatic telephone dialing system or an  
28 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §

1 227(b)(1)(A).

2 13. Further, Plaintiff's cellular telephone number ending in -6443 had  
3 been on the National Do-Not-Call Registry well over thirty (30) days prior to  
4 Defendant's initial call.

5 14. Defendant placed multiple calls soliciting its business to Plaintiff on  
6 his cellular telephone ending in -6443 in or around August 2019.

7 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
8 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

9 16. Plaintiff received at least one solicitation call from Defendant within  
10 a 12-month period.

11 17. Defendant called Plaintiff in an attempt to solicit its services and in  
12 violation of the National Do-Not-Call provisions of the TCPA.

13 18. Upon information and belief, and based on Plaintiff's experiences of  
14 being called by Defendant after being on the National Do-Not-Call list for several  
15 years prior to Defendant's initial call, and at all relevant times, Defendant failed to  
16 establish and implement reasonable practices and procedures to effectively prevent  
17 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
18 227(c)(5).

19 **CLASS ALLEGATIONS**

20 19. Plaintiff brings this action individually and on behalf of all others  
21 similarly situated, as a member the two proposed classes (hereafter, jointly, "The  
22 Classes").

23 20. The class concerning the ATDS claim for no prior express consent  
24 (hereafter "The ATDS Class") is defined as follows:

25 All persons within the United States who received any  
26 solicitation/telemarketing telephone calls from  
27 Defendant to said person's cellular telephone made  
28 through the use of any automatic telephone dialing  
system or an artificial or prerecorded voice and such

1 person had not previously consented to receiving such  
2 calls within the four years prior to the filing of this  
3 Complaint

4 21. The class concerning the National Do-Not-Call violation (hereafter  
5 “The DNC Class”) is defined as follows:

6 All persons within the United States registered on the  
7 National Do-Not-Call Registry for at least 30 days, who  
8 had not granted Defendant prior express consent nor had  
9 a prior established business relationship, who received  
10 more than one call made by or on behalf of Defendant  
11 that promoted Defendant’s products or services, within  
12 any twelve-month period, within four years prior to the  
13 filing of the complaint.

14 22. Plaintiff represents, and is a member of, The ATDS Class, consisting  
15 of all persons within the United States who received any collection telephone calls  
16 from Defendant to said person’s cellular telephone made through the use of any  
17 automatic telephone dialing system or an artificial or prerecorded voice and such  
18 person had not previously not provided their cellular telephone number to  
19 Defendant within the four years prior to the filing of this Complaint.

20 23. Plaintiff represents, and is a member of, The DNC Class, consisting  
21 of all persons within the United States registered on the National Do-Not-Call  
22 Registry for at least 30 days, who had not granted Defendant prior express consent  
23 nor had a prior established business relationship, who received more than one call  
24 made by or on behalf of Defendant that promoted Defendant’s products or services,  
25 within any twelve-month period, within four years prior to the filing of the  
26 complaint.

27 24. Defendant, its employees and agents are excluded from The Classes.  
28 Plaintiff does not know the number of members in The Classes, but believes the  
Classes members number in the thousands, if not more. Thus, this matter should

1 be certified as a Class Action to assist in the expeditious litigation of the matter.

2 25. The Classes are so numerous that the individual joinder of all of its  
3 members is impractical. While the exact number and identities of The Classes  
4 members are unknown to Plaintiff at this time and can only be ascertained through  
5 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
6 The Classes includes thousands of members. Plaintiff alleges that The Classes  
7 members may be ascertained by the records maintained by Defendant.

8 26. Plaintiff and members of The ATDS Class were harmed by the acts of  
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
10 and ATDS Class members via their cellular telephones thereby causing Plaintiff  
11 and ATDS Class members to incur certain charges or reduced telephone time for  
12 which Plaintiff and ATDS Class members had previously paid by having to retrieve  
13 or administer messages left by Defendant during those illegal calls, and invading  
14 the privacy of said Plaintiff and ATDS Class members.

15 27. Common questions of fact and law exist as to all members of The  
16 ATDS Class which predominate over any questions affecting only individual  
17 members of The ATDS Class. These common legal and factual questions, which  
18 do not vary between ATDS Class members, and which may be determined without  
19 reference to the individual circumstances of any ATDS Class members, include,  
20 but are not limited to, the following:

- 21 a. Whether, within the four years prior to the filing of this  
22 Complaint, Defendant made any telemarketing/solicitation call  
23 (other than a call made for emergency purposes or made with  
24 the prior express consent of the called party) to a ATDS Class  
25 member using any automatic telephone dialing system or any  
26 artificial or prerecorded voice to any telephone number  
27 assigned to a cellular telephone service;
- 28 b. Whether Plaintiff and the ATDS Class members were damaged

thereby, and the extent of damages for such violation; and

- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

28. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

29. Plaintiff and members of The DNC Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class members were damaged thereby.

30. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;
- b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff or the DNC Class members'



1                   telephones;

2           c.     Whether Plaintiff and the DNC Class member were damaged  
3                 thereby, and the extent of damages for such violation; and

4           d.     Whether Defendant and its agents should be enjoined from  
5                 engaging in such conduct in the future.

6           31.    As a person that received numerous solicitation calls from Defendant  
7                 within a 12-month period, who had not granted Defendant prior express consent  
8                 and did not have an established business relationship with Defendant, Plaintiff is  
9                 asserting claims that are typical of the DNC Class.

10          32.    Plaintiff will fairly and adequately protect the interests of the members  
11                 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
12                 class actions.

13          33.    A class action is superior to other available methods of fair and  
14                 efficient adjudication of this controversy, since individual litigation of the claims  
15                 of all Classes members is impracticable. Even if every Classes member could  
16                 afford individual litigation, the court system could not. It would be unduly  
17                 burdensome to the courts in which individual litigation of numerous issues would  
18                 proceed. Individualized litigation would also present the potential for varying,  
19                 inconsistent, or contradictory judgments and would magnify the delay and expense  
20                 to all parties and to the court system resulting from multiple trials of the same  
21                 complex factual issues. By contrast, the conduct of this action as a class action  
22                 presents fewer management difficulties, conserves the resources of the parties and  
23                 of the court system, and protects the rights of each Classes member.

24          34.    The prosecution of separate actions by individual Classes members  
25                 would create a risk of adjudications with respect to them that would, as a practical  
26                 matter, be dispositive of the interests of the other Classes members not parties to  
27                 such adjudications or that would substantially impair or impede the ability of such  
28                 non-party Class members to protect their interests.



35. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b).**

**On Behalf of the ATDS Class**

36. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

39. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection**

**Act**

**47 U.S.C. §227(b)**

**On Behalf of the ATDS Class**

40. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-39.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,

1 and in particular 47 U.S.C. § 227 (b)(1)(A).

2 42. As a result of Defendant's knowing and/or willful violations of 47  
3 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of  
4 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
5 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

6 43. Plaintiff and the Class members are also entitled to and seek injunctive  
7 relief prohibiting such conduct in the future.

8 **THIRD CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. §227(c)**

11 **On Behalf of the DNC Class**

12 44. Plaintiff repeats and incorporates by reference into this cause of action  
13 the allegations set forth above at Paragraphs 1-43.

14 45. The foregoing acts and omissions of Defendant constitute numerous  
15 and multiple negligent violations of the TCPA, including but not limited to each  
16 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular  
17 47 U.S.C. § 227 (c)(5).

18 46. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),  
19 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory  
20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

21 47. Plaintiff and the DNC Class members are also entitled to and seek  
22 injunctive relief prohibiting such conduct in the future.

23 **FOURTH CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
25 **Act**

26 **47 U.S.C. §227 et seq.**

27 **On Behalf of the DNC Class**

28 48. Plaintiff repeats and incorporates by reference into this cause of action

the allegations set forth above at Paragraphs 1-47.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

50. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

51. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

### **SECOND CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to

\$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- Any and all other relief that the Court deems just and proper.

### **THIRD CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

### **FOURTH CAUSE OF ACTION**

#### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

##### **47 U.S.C. §227(c)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

52. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 11th Day of March, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
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